

# MEMO ENDORSED

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July 15, 2008

**ORIGINAL**

BY FAX 914-390-4170

Hon. William C. Conner  
United States District Judge  
300 Quarropas St., Room 630  
White Plains, N.Y. 10601

Re: Anirudh v. CitiMortgage, Inc.  
No. 08 Civ. 3081 (WCC)

ECF CASE

USDC SDNY
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Dear Judge Connor:

We represent defendant CitiMortgage, Inc. ("CMI") in this alleged class action arising out of CMI's procedures for the pay-off of residential co-op loans. I write in accordance with paragraph 2.A of Your Honor's Individual Practices to request a pre-motion conference on a motion to dismiss for lack of subject matter jurisdiction and also perhaps for failure to state a claim upon which relief can be granted. In anticipation of this request, a conference has been scheduled for this Friday, July 18, at 9:15 A.M.

The complaint alleges diversity jurisdiction under the Class Action Fairness Act of 2005. We initially agreed on CAFA jurisdiction, and indeed we removed a similar action originally filed in Supreme Court, New York County. Further investigation, however, revealed that more than 90% of the CMI co-op loans paid off during the alleged class period had been made on New York state co-ops. Because CMI is a New York corporation, the case therefore falls within the home-controversy exception to CAFA jurisdiction. "A district court shall decline to exercise jurisdiction under [CAFA] if \* \* \* two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed." 28 U.S.C. § 1332(d)(4)(B); *see also Hart v. Fedex Ground Package Sys. Inc.*, 457 F.3d 675, 679 (7th Cir. 2006) ("Under the 'home-state controversy' exception, district courts must decline to exercise jurisdiction where two-thirds or more of the members of the proposed plaintiff class and the primary defendants are citizens of the original filing state."). The action must therefore be dismissed without prejudice under Fed. R. Civ. P. 12(b)(1). Based on these facts, we stipulated to a remand of the similar action in an order approved by Judge Jones on July 14, 2008. We are prepared to brief this issue expeditiously, in accordance with any briefing schedule amenable to the Court.

CMI also submits that the complaint fails to state a claim upon which relief can be granted and is subject to dismissal on a motion under Fed. R. Civ. P. 12(b)(6). The pay-off practices described

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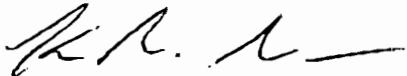
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in the complaint conform to the parties' contracts. Moreover, federal law expressly preempts the plaintiffs' claims. We are prepared to brief these alternative grounds for dismissal in tandem with the jurisdictional ground or to reserve them for a subsequent Fed. R. Civ. P. 12(c) motion for judgment on the pleadings, as the Court prefers. Whether the Rule 12(b)(6) grounds are briefed or not, the Court will have to consider the jurisdictional issue in the first instance. *See, e.g., Steel Co. v. Citizens For A Better Environment*, 523 U.S. 83, 94-95 (1998) (reaffirming that federal courts must address questions of jurisdiction before rendering opinion on merits issues).

In closing, we note that the parties had previously stipulated to a responsive pleading due date of today, July 15, 2008. In accordance with the Court's Individual Practices, which do not permit the filing of a dispositive motion in advance of a pre-motion conference, we have refrained from filing a motion to dismiss under Fed. R. Civ. P. 12(b)(1) and instead submit this letter. Because plaintiffs' counsel has declined to enter into a stipulation extending CMI's time to answer or respond through and including the date of the pre-motion conference scheduled for Friday July 18, 2008, we also hereby request an extension of CMI's time to answer or otherwise respond through and including the filing deadline set by the Court at the July 18, 2008 conference. Two prior requests for extensions of time were made by stipulation of the parties. Both were granted by the Court.

Respectfully submitted,



Kwaku A. Akowuah

cc by fax:

Jeffrey S. Greene, Esq.  
Sanford Young, Esq.

*Δ's Request for extension  
is GRANTED.*

*So ORDERED.*

*Dated: White Plains, NY  
July 18, 2008*



WILLIAM C. CONNER, Senior U.S.D.J.

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